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IN THE

Supreme Court of the United States

October Term, 1965

No. 770

DR. WILLIAM R. BECK, ... *Appellant,*

vs.

DANIEL R. McLEOD, Attorney General of South Carolina

Appeal from the U. S. District Court—Eastern District of South Carolina, Charleston Division

STATEMENT AS TO JURISDICTION

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OPINION BELOW

The opinion of the Three-Judge District Court dismissed the Complaint of the Appellant upon the ground that the Supreme Court of the United States, in a former case concerning the Statute in question, had stated that there was no substantial Federal question, and that finding was, therefore, binding upon the Three-Judge Court in that it was the same as an adjudication upon the merits and as such foreclosed the questions presented by Plaintiff's Complaint. A copy thereof is annexed hereto as Appendix A, infra pp 2a-3a.

JURISDICTION

(i) This was an action brought by Plaintiff, in accord with 28 U. S. C. §2281, seeking an injunction and declaratory judg-

ment, that the Act of the South Carolina General Assembly approved February 27th, 1956, entitled "An Act To Repeal Sections 56-901 through 56-919, Code of Law of South Carolina, 1952, Relating to The Practice Of Naturopathy; To Make It Unlawful For Certain Persons To Practice Naturopathy In This State: And To Provide Penalties for Violating The Provisions of This Act" (infra, Appendix B, pp 3a-10a), was unconstitutional, in violation of, inter alia, the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments.

The proceeding was originally brought in a Three-Judge District Court, as prescribed by 28 U. S. C. §2281, which gives such Court the jurisdiction of suits for injunction, wherein the constitutionality of a State Statute is in issue. Pursuant to Code of Laws of South Carolina, 1962, §10-2008, providing that the Attorney General shall be made a party when the constitutionality of a State Statute is involved, the Attorney General of South Carolina was named sole defendant.

(ii) The opinion and Order of the U. S. District Court dismissing the Complaint was filed on April 21st, 1965. Judgment of the U. S. District Court was filed on April 30th, 1965. The Notice of Appeal was filed in the U. S. District Court, Eastern District of South Carolina, Charleston Division, on June 15th, 1965.

(iii) The jurisdiction of this Court to review the judgment below by appeal is conferred by 28 U. S. C. §1253.

QUESTIONS PRESENTED

I. Whether or not the District Court erred in holding that the effect of the United States Supreme Court's dismissal of an appeal in a different Naturopath's case, that of *Dantzler v. Callison* 352 U. S. 939, for want of a substantial Federal question, was tantamount to an adjudication upon the merits of such case, and as such foreclosed the question in this case, meaning thereby that the Supreme Court had already adjudicated that there was no substantial Federal question involved in that case, and the effect would be that there was none in this case.

II. The following questions were also before the Court below and were, in effect, disallowed by the Court's ruling and is, therefore, erroneous. The questions are set forth below as (a) (b) and (c) as they were before the District Court:

(a) Is the Statute repealing the Naturopathic Laws, with the proviso setting forth a different method of admission, a deprivation of Plaintiff's property rights, without due process of law as provided by the Fifth and Fourteenth Amendments of the Constitution of the United States, in that they require additional qualifications and restrictions that are not reasonably attainable by Plaintiff or others that practiced Naturopathy?

(b) Is the Act violative of the Fifth and Fourteenth Amendments in that it wrongfully discriminates among the classes of the Healing Arts by placing higher restrictions and qualifications upon Plaintiff to practice his profession than upon any other of the Healing Arts?

(c) Is the Repealing Act unconstitutional in that it is arbitrary or discriminatory as applied to Naturopaths and embraces an unreasonable regulation, which does not bear a reasonable relationship to the knowledge necessary to practice Naturopathy?

STATEMENT

This was a proceeding brought under Title 28 U. S. C. §2281, seeking an injunction and declaratory judgment as to the validity of an Act of the General Assembly of South Carolina, entitled "An Act To Repeal §56-901 through §56-919, Code of Laws of South Carolina, 1952, Relating To The Practice of Naturopathy; To Make It Unlawful For Certain Persons To Practice Naturopathy In This State; And To Provide Penalties For Violating The Provisions Of This Act." (infra, Appendix B, pp 3a-10a).

Plaintiff below—Appellant here—and hereinafter referred to as Appellant, is a Naturopathic physician and at the time the Repealing Act was passed, was licensed to practice in South Carolina. The Defendant below—Appellee here—is the Attorney General of the State of South Carolina.

The Complaint alleges the Act in question violates inter alia the Fifth and Fourteenth Amendments of the Constitution of the United States, in that it deprives Plaintiff of his property and property rights without due process of law, and denies to him equal protection of the law, and that the said Act is arbitrary and discriminatory, not only in the field of Naturopathy, but in the entire medical field (¶ 5).

The Complaint alleges (¶ VI) that it is unlawful, by said Statute, to practice Naturopathy, due to the fact that the Supreme Court of South Carolina has held that the Statute is constitutional.

The Complaint alleges (¶ VII) that the Attorney General of South Carolina will enforce such Statute and in his Answer (¶ III) the Attorney General admits that he will enforce such Statute.

That by reason of said Statute, Plaintiff alleges (¶ VII) that he has lost a valuable right of practicing a profession for which he has studied and trained and under which he has practiced for many years, under a license granted by the State of South Carolina; that he has invested many thousands of dollars in equipment, offices and training and that the enforcement of said Statute has deprived him of his property, his civil rights, privileges and immunities, as a citizen of South Carolina.

Appellant (¶ IX) states that the Statute gives special and exclusive privileges to a special body of citizens by restricting the care and treatment of the citizens of South Carolina to only those licensed as Medical Doctors, and (¶ X) Appellant asserts that the Statute imposes upon him a higher standard to practice the healing arts than is imposed upon medical doctors.

Appellee's Answer (¶ 5) raised the defense that the matter set forth in Plaintiff's Complaint was considered and determinded by the Supreme Court of South Carolina in the case of *Dantzler, et al v. Callison*, 94 S. E. 2d 177; that the Statute was held by the Court to be valid, non-discriminatory and a proper exercise of the police power of the State. That a review before the Supreme Court of the United States was dismissed for want of a substantial Federal question in a memorandum decision, 352 U. S. 939, 77 S. Ct. 263, 1 L Ed. 2d. 235.

The parties further stipulated that Plaintiff, Dr. William R. Beck was licensed to practice as a Naturopathic doctor in the State of South Carolina, prior to the Naturopathic Law being repealed and that the South Carolina law requires a medical doctor to only have three years at an accredited school or university, four years at an accredited medical school and one year of internship, in order to practice as a medical doctor.

In its opinion (Appendix A—infra pp 2a-3a) the District Court dismissed the Complaint upon the grounds that the Supreme Court of the United States had determined in the case of *Dantzler v. Callison,* 352 U. S. 939, that there was no substantial Federal question involved, and the findings of the Court in that case, since it involved the same Act, was an adjudication upon the merits as such, and, therefore, foreclosed the questions raised by Plaintiff's Complaint. However, in its Foot Note 1, the District Court found that the Act did place requirements upon the Plaintiff that exceeded those of medical doctors.

The Court based its opinion in dismissing the Complaint upon the authority of "Stern and Gressman, Supreme Court practice (3rd Ed. 1962) Page 164, citing *Barton v. Sentner,* 353 U. S. 963 *where it is noted* that (t) he Court is, however, deciding a case on the merits, when it dismisses for want of a *substantial* question or affirms summarily." The error of this is, that the case of Barton v. Sentner does not make such statements, nor does it have anything to do with Federal jurisdiction or the effect of the want of a substantial question. In other words the District Court based its opinion upon a completely erroneous citation.

HOW THE FEDERAL QUESTIONS WERE RAISED

A. Appellant alleges the Federal unconstitutionality of the Act in Paragraphs V-IX and X of his Complaint, viz:

V- "That Plaintiff alleges the Act in question is in violation of his Rights as a Citizen of the United States of America, as provided in the Fifth and Fourteenth Amendments of the Constitution of the United States, in that it deprives the Plaintiff of his property and property rights, without due

process of Law, and denies him the equal protection of the Law; and further:

(1) That the Act is arbitrary and discriminatory.

(2) That it is an unreasonable regulation of the practice of Naturopathy, and that the qualifications set forth in said Act bear an unreasonable relationship to the knowledge necessary to practice the profession in question.

(3) That it sets forth and prescribes a higher standard for Plaintiff to practice Naturopathy, then it does for a regular or Allopathic Doctor to practice medicine.

(4) That the Act further discriminates wrongfully against this Plaintiff, in that it sets forth a higher standard for him to practice or become licensed as a Medical Doctor, than those already licensed, or will be licensed by the State Board of Medical Examiners of South Carolina, in that the said Act required Plaintiff, (a) to be a graduate of an accredited College for pre-medical training, (b) to be a graduate from a Medical College and (c) that for a period of five years prior to the passage of this Act, to be engaged in the practice of medicine, under the supervision of a licensed Medical Doctor. That the foregoing requirements are far in excess of that required for those individuals not formerly Naturopaths.

(5) That there are numerous Medical Doctors in South Carolina who are now practicing, and are licensed Medical Doctors, who do not possess the requirements called for by the Act, nor the qualifications presently established by the Medical Board for all individuals other than Naturopaths."

"IX- That the said Statute confers special and exclusive privileges to a special body of citizens, by restricting the care and treatment of the citizens of South Carolina to only those licensed as Medical Doctors."

"X- That the said Statute discriminates unfairly against the Plaintiff, by imposing upon him a higher standard to practice the "Healing Arts" than is imposed upon Medical Doctors."

B. Appellee contended that the Act was constitutional as follows:

"Defendant alleges that all the matters set forth in the Complaint were considered and determined by the Supreme Court of South Carolina in the case of *Dantzler, et al v. Callison*, 230 S. C. 75, 94 S. E. 2d 177; that the Supreme Court of South Carolina held the Statute in question to be valid, non-discriminatory and a proper exercise of the police power of the State; that a review was subsequently sought in the Supreme Court of the United States, but that Court dismissed the Appeal for want of a substantial Federal question in a Memorandum decision, 352 U. S. 939, 77 S. Ct. 263, 1 L. Ed. 2d 235; this Defendant respectfully alleges that the prohibition of the practice of Naturopathy as a separate branch of the healing art is a proper application of the police power of the State; that it applies equally to all persons practicing Naturopathy and that said classification is reasonable, non-discriminatory and does not deny equal protection of the Law to those within the class."

C. The opinion of the District Court did not fully consider the constitutional question though it inferred that the Statute was unconstitutional. (Appendix A- infra Foot Note 1 pp 2a). The District Court based its entire opinion upon the grounds that it did not have jurisdiction, or that the Plaintiff did

not have a cause of action, since the Supreme Court of the United States had foreclosed the issue by finding in the former case inolving the same Act, that no substantial Federal question was involved.

THE QUESTIONS ARE SUBSTANTIAL

In this Appeal Appellant is proceeding upon the theory of pure law, with the understanding that the Court is cognizant of the circumstances that naturally prevail, from an economic point of view, when a man has been deprived of his profession.

The Supreme Court of South Carolina in several cases, has decreed that the right to practice medicine is a very high property right.[1] This position has also been maintained by the Supreme Court of the United States.[2]

The Supreme Court of South Carolina has held that a Legislature could not prohibit the practice of medicine or surgery.[3]

The Appellee admits in its Answer, admitted before the District Court, and has admitted in a former case, that Naturopathy is prohibited in South Carolina.

The Supreme Court of South Carolina has also held that a State that grants a license to practice, may later enact certain provisions that regulate and restrict the activities of the licensee, and if the regulations are reasonable, they will be upheld even though they prohibit *some*[4] people from further engaging in such profession.[5]

In this case it was orally stipulated, before the District Court, that only two of the approximately fifty practitioners of

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[1]Ezell v. Ritholz, et al 188 S. C. 39, 198 S. E. 419; Dantzler v. Callison, 94 S. E. 2d 177.

[2]Dent v. West Virginia 129 U. S. 114.

[3]Dantzler v. Callison 94 S. E. 2d 177.

[4]Italics by writer.

[5]Dantzler v. Callison 94, S. E. 2d 177 Note 8 L. R. A. (N.S.) 1273.

Naturopathy in South Carolina could now practice; those two were medical doctors from an unaccredited Medical College.

The Supreme Court of the United States has ruled in the case of Dent v. West Virginia[6], that the Legislature of a State may reasonably regulate, however, the regulations imposed must be that type of regulation that would be *reasonably attainable*[7] or it would constitute a wrongful deprivation of property and property rights. In that case the State of West Virginia provided an escape or saving clause, in that, if the challenged practitioner did not meet the requirements as set by the Statute, he could take an examination and if found qualified, he would be allowed to continue practicing. No such saving clause exisits in the South Carolina Statute. In fact, the South Carolina Statute made it impossible for forty eight of fifty practitioners to continue practicing under any conditions and imposed restrictions that were far in excess of that required by any type of doctor of the healing arts. It is plain that the Statute is purely prohibitory, as the Appellee has continuously so stated.

The South Carolina Statute violates the law and the spirit of the law, as set forth in each of the cases above and it, therefore, seems patent that the Statute is unconstitutional on its face.

In a fairly recent case, England v. Louisiana State Board of Medical Examiners[8], the Court held that it is clear that the barring of a profession by unusual regulations is a wrongful taking of property and property rights and raises a substantial Federal question.

I know of no cases that govern or control the position taken

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[6]Dent v. West Virginia—129, U. S. 114.
[7]Italics by writer.
[8]259 F. 2d 626.

by the Court below in regard to the effect of the Supreme Court finding a lack of a substantial Federal question. As pointed out before, the Supreme Court had ruled, in a former case concerning the same Statute now involved, that no substantial Federal question was raised in that case and, therefore, affirmed. The Court below stated that this action of the Supreme Court had the legal effect of adjudicating the case upon its merits and foreclosed any other attacks upon the constitutionality of the Statute.

The Court below based its decision, as shown in Foot Note No. 2 of the Opinion on the authority of Stern and Gressman. However, in researching the authority cited by Stern and Gressman, the case of Barton v. Sentner, 353 U. S. 963, had nothing, whatsoever, to do with the want of a substantial Federal question or the effect of the Court finding the lack of such. This authority is, therefore, in error and the Court below's position, based on this authority, would be erroneous.

The only authority that this writer has found, concerning the effect of a ruling by the Supreme Court that no substantial question exists, is the case of Stuart, et al v. Wilson[9], Attorney General of Texas, et al. Two Appeals were taken from this case, apparently simultaneously, one to the Supreme Court and one to the Court of Appeals. The Supreme Court ruled that no substantial Federal question existed, however, the Court of Appeals subsequently held that a substantial Federal question did exist and, therefore, ordered a Three-Judge Court to hear the case on its merits. The case was heard. It would seem, therefore, the Supreme Court's ruling is not binding upon the merits of the case, but means, according to the information placed before the Court, no substantial Federal question appears.

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[9]282 F. 2d 539; 293 F. 2d 914; 211 F. Supp. 700; 371 U. S. 576.

The complete history of this trial is given in the case of Stuart, et al v. Wilson 293 F. 2d, 914.

The Appellee and the Court below placed much emphasis upon the cases of Hitchcock v. Collenberg, [10] and Louisiana v. Fife[11]. However, these cases are clearly not applicable since they merely stand for the proposition that a Legislature does not have to *provide*[12] laws for separate systems of the healing arts. In both cases, the Legislature failed to provide for the practice of Naturopaths or for the practice of Chiropractors. The Appellant's case stands in an entirely different situation, in that in South Carolina, Statutes of long standing provided for the practice of Naturopathy.

CONCLUSION

It is, therefore, respectfully submitted that the Court should exercise its jurisdiction and set the matter down for full consideration, with oral argument or in the alternative vacate the judgment of dismissal and remand the case for trial on the merits.

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[10] 140 F. Supp. 894; 352 U. S. 805.
[11] 111—So. 58, 54 ALR 594; 274 U. S. 720.
[12] Italics by writer.

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA CHARLESON DIVISION

Civil Action No. 7972

DR. WILLIAM R. BECK, _____ *Appellant,*

vs.

DANIEL R. McLEOD, Attorney General of South Carolina

ORDER

Upon consideration of the briefs and the argument of counsel, it appearing to the Court for the reasons set forth in its opinion filed herewith that the plaintiff, as a matter of law, is entitled to no relief,

IT IS, THEREFORE, ORDERED that the plaintiff's complaint be, and it hereby is, dismissed for failure to state a claim upon which relief may be granted.

/s/ CLEMENT F. HAYNSWORTH, JR.
United States Circuit Judge

ROBERT W. HEMPHILL
United States District Judge

CHARLES E. SIMONS, JR.
United States District Judge

April 21, 1965

OPINION

PER CURIAM:

Plaintiff seeks an injunction against the enforcement of the statute of South Carolina proscribing the practice of naturopathy in that State unless the practitioner has met requirements substantially equivalent to those of ordinary physicians and has passed the examination requisite for the licensing of medical doctors.[1] The attack is based upon the due process clause of the Fourteenth Amendment.

Shortly after the pasage of the Act which is now before us, an association of Naturopaths, who had earlier practiced their calling in the State of South Carolina, brought an action in the state court seeking to enjoin enforcement of the statute. There, state grounds were relied upon in addition to the constitutional contention now urged before us. The Supreme Court of South Carolina held the statute unassailable on either state or federal grounds[2], and the United States Supreme Court dismissed the appeal fo want of a substantial federal question.[3]

The effect of the Supreme Court's dismissal of the appeal from the Supreme Court of South Carolina, on the ground that there was no substantial federal question, was tantamount to an adjudication upon the merits.[4] As such, it substantially forecloses the question here.

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[1]South Carolina Code, §§56-901 and 56-3751.1. Some of the requirements may actually exceed those applicable to ordinary physicians. Such circumstances are not relevant here, however, for the plaintiff can meet none of the requirements which must be met by applicants for ordinary physicians' licenses. If he could, he would be entitled to a regular physician's license.

[2]Dantzler v. Callison, 230 S. C. 75, 94 S. E. 2d 177.

[3]Dantzler v. Callison, 352 U. S. 939.

[4]Wright on Federal Courts (1963 Ed.) p. 431. See also Stern & Gressman, Supreme Court Practice (3rd Ed. 1962), p. 164, citing Barton v. Sentner, 353 U. S. 963, where it is noted that "[t]he court is, however, deciding a case on the merits, when it dismisses for want of a *substantial* question, or affirms summarily."

A number of other cases strongly indicate that the statute has no constitutional infirmity.[5]

Complaint dismissed.

APPENDIX B

STATUTES INVOLVED

1. The challenged Act—Code of Laws of S. C. 1962 Secs. 56-901, 56-902, 56-1357.1

§ 56-901. Practice unlawful.

It shall be unlawful for any person whether heretofore licensed or not under the laws of this or any other State to practice naturopathy in this State. (1956 (49) 1624.)

§ 56-902. Penalties.

Any person violating the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and be fined not exceeding five hundred dollars or be imprisoned for a period of not exceeding one year, or both, in the discretion of the court. (1956 (49) 1624.)

§ 56-1357.1. Same; special provision for certain naturopathic practioners.

Any person authorized to practice naturopathy in South Carolina on February 26, 1956 who is a graduate of an accredited college for premedical training and who has, in addition thereto, graduated from a medical college recognized at the time of his graduation by the state in which it was located, and who has heretofore for a period in excess of five years engaged in the practice of medicine in this State under the

[5]Hitchcock v. Collenberg, 140 F. Supp. 894, Aff. 353 U. S. 919; Stuart v. Wilson, 211 F. Supp. 700, Aff., 371 U. S. 576; Dent v. State of West Virginia, (1889), 129 U. S. 114, Douglas v. Noble (1923), 261 U. S. 165; Graves v. State of Minnesota (1926), 272 U. S. 425; and Williamson, Attorney General v. Lee Optical Co. of Oklahoma, 348 U. S. 483.

supervision of a licensed medical doctor by special request or by special permission of the State Board of Medical Examiners, or agents thereof, shall be examined by the State Board of Medical Examiners on the same basis as other applicants to the Board are examined, and upon the making of a passing grade on this examination, shall be licensed to practice medicine in this State. (1956 (49) 1624.)

2. Provisions repealed by the challenged Act.

CODE OF LAWS OF SOUTH CAROLINA, 1952

[Annotations omitted]

CHAPTER 16

NATUROPATHY

Sec.		Sec.	
56-901.	Naturopathy defined.	56-911.	Licensees register in clerk's office.
56-902.	Board of Examiners.	56-912.	Authority and duties of naturopaths.
56-903.	Organization; rules and regulations; meetings.	56-913.	Naturopaths not to practice medicine, osteopathy, etc.
56-904.	General power with respect to naturopathy.	56-914.	Grounds for suspension or revocation of license.
56-905.	Application and fee.	56-915.	Charges against licensee and notice thereof.
56-906.	Qualifications of applicants.	56-916.	Hearing and finding of Board.
56-907.	Recognized school, college or university of naturopathy defined.	56-917.	Appeal.
56-908.	Subjects and type of examinations.	56-918.	Pay certain funds to public school fund.
56-909.	Reexamination after failure.	56-919.	Penalties.
56-910.	Licensing of nonresident naturopaths.		

§ 56-901. Naturopathy refined.

"Naturopathy" is hereby defined to mean the use and practice of psychological, mechanical and material health sciences to aid in purifying, cleaning and normalizing human tissues for preservation or restoration of health according to the fundamental principles of anatomy, physiology and applied psychology, as may be required. Naturopathic practice employs, among other agencies, heat, light, water, electricity,

pyschology, diet, massage and other manipulative methods. These agencies are known as psychotherapy, suggestotherapy, hydrotherapy, electrotherapy, mechanotherapy, biochemistry, external appliances, mechanical and electrical appliances, hygiene, first aid, sanitation, heliotherapy and dietetics. The use and practice of phytotherapy, minor surgery, obstetrics and gynecology, autotherapy and biologicals shall be a part of and included in the practice of naturopathy.

§ 56-902. Board of Examiners.

There is hereby created a board of naturopathic examiners to be known as the South Carolina Board of Naturopathic Examiners. Whenever the terms of office of the members of the Board are about to expire the South Carolina Naturopathic Association shall recommend to the Governor, who shall appoint, four members of the Board, who shall be members of the South Carolina Naturopathic Association and whose term of office shall be for a period of four years.

§ 56-903. Organization; rules and regulations; meetings.

The Board shall meet within ten days after its appointment every four years and organize by electing a president, secretary and treasurer and adopting reasonable rules and regulations for the transaction of business. It shall meet in June and November of each year.

§ 56-904. General power with respect to naturopathy.

The Board may transact any business or legal matters pertaining to the practice of naturopathy in this State.

§ 56-905. Application and fee.

All applicants for examination and licensing must file with the secretary of the Board at least fifteen days prior to its

regular meeting time proper credentials and a fee of twenty-five dollars.

§ 56-906. Qualifications of applicants.

Each applicant for examination and licensing to practice naturopathy in this State must be a graduate of a regular four year high school course and a two years premedical course and must have completed and hold a diploma from an accredited school, college or university of naturopathy conferring the degree of doctor of naturopathy recognized by the South Carolina Board of Naturopathic Examiners.

§ 56-907. Recognized school, college or university of naturopathy defined.

Any Class A school, college or university legally chartered and having a regular professional course in naturopathy and its allied branches of four years of nine months each, making a total of four thousand four hundred hours, and including in its curriculum bacteriology, anatomy, diagnosis, comparative medicine, physiology, etiology, hydrotherapy, histology, pathology, phytotherapy, biology, toxicology, electrotherapy, chemistry, hygiene and sanitation, massotherapy, analysis, biochemistry, orthopedics, symtomatology, physiotherapy, practice of naturopathy, autotherapy, ethics and jurisprudence, dietetics, gynecology and obstetrics shall be recognized by the South Carolina Board of Naturopathic Examiners and shall be a recognized school, college or university of naturopathy.

§ 56-908. Subjects and type of examinations.

The Board may name the branches of naturopathy and its allied sciences in which the applicant for licensing shall be examined and shall hold written or oral examinations or both, in the discretion of the Board.

§ 56-909. Reexamination after failure.

In case an applicant fails to pass the examination he shall be entitled to a second examination at the next regular meeting of the Board.

§ 56-910. Licensing of nonresident naturopaths.

Any person of good moral character licensed by a naturopathic board of any other state whose requirements are commensurate with the requirements of this State may in the discretion of the Board and upon the payment of fifty dollars be granted a license to practice in this State without examination.

§ 56-911. Licensees register in clerk's office.

Every licensed naturopathic physician shall be required, after receiving a certificate of qualification or license from the Board, to register in the county in which he resides with the clerk of court's office and pay a fee of fifty cents.

§ 56-912. Authority and duties of naturopaths.

All naturopahtic physicians who are in active practice and licensed in this State may sign birth, death and health certificates, shall be required to report all infectious and contagious diseases to the State Board of Health and shall be accorded the use of the State biological and chemical laboratories.

§ 56-913. Naturopaths not to practice medicine, osteopathy, etc.

Nothing in this chapter shall be held or constructed to authorize any naturopathic physician licensed hereunder to practice materia medica or surgery, nor shall the provisions of

this chapter in any manner apply to or affect the practices of osteopathy, chiropractic, Christian Science or any other treatment authorized or provided for by law for the cure and prevention of diseases and ailments.

§ 56-914. Grounds for suspension or revocation of license.

The Board may suspend or revoke, by a majority vote of its total membership, any license which may have been given under the provisions of this chapter to any practitioner to practice naturopathy in this State for any one or more of the following causes shown at a hearing before it, to wit:

(1) That any diploma, license, certificate or other credential illegally or fraudulently obtained by the applicant was presented to or filed with the Board and considered by it in granting the license;

(2) That a license has been applied for and issued under an assumed name for the purpose of shielding dishonesty or a criminal record;

(3) Conviction of any criminal operation or habitual drunkenness or adjudication of insanity;

(4) Immoral or dishonorable conduct which would reflect upon the licensee's professional competency;

(5) Addiction to any harmful drug habit;

(6) Unprofessional conduct bringing discredit upon the profession; and

(7) Conviction of a felony or misdemeanor involving moral turpitude or professional dishonor in which case the record of the conviction, or a certified copy thereof, certified by the clerk of court and by the judge in whose court the conviction is had shall be conclusive evidence thereof.

§ 56-915. Charges against licensee and notice thereof.

Whenever the Board shall have cause to believe that any license issued by it should be revoked because of the existence of some ground for revocation as set forth in § 56-914, it shall file or cause to be filed with its secretary written charges against the accused, specifically setting forth the offense, act or conduct complained of. A copy of such charges shall be forthwith delivered to the accused practitioner in person or by registered mail or left with some person of sound discretion either at his place of business or place of last known residence, either of which shall constitute sufficient notice to justify proceeding with a hearing of the charge. In addition to the delivery of a copy of the charges, the Board shall, at the same time, advise the accused of the hour, day and place of a hearing of the charges and warn him to be present, if he so desires, and to defend the action.

§ 56-916. Hearing and finding of Board.

The accused practioner shall be permitted to be present in person and by attorney at the hearing and at the taking of all testimony relative to the charges. Any member of the Board may administer oaths to all persons testifying at any such hearing. The accused shall be allowed at least ten days from the date of such notice to him of the charges before the hearing shall be held. The Board shall receive reasonable evidence, whether for or against the accused, and the Board shall not be bound by the strict rules of evidence as required in a court. The findings of facts of the Board shall be conclusive. The Board shall reach its findings and set forth its action thereon and a certified copy of such findings and of the action of the Board shall be served upon the accused practitioner.

§ 56-917. Appeal.

The practitioner, if he is dissatisfied, may apply to the court of common pleas of the county in which he resides or practices for a writ of certiorari and the questions to be determined by the court on such writ of certiorari shall be as provided by law and the decisions of the Supreme Court of this State.

§ 56-918. Pay certain funds to public school fund.

If at the close of any fiscal year there remains in the hands of the Board more than five hundred dollars over and above all indebtedness, the amount so held shall be turned over to the public school fund.

§ 56-919. Penalties.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and punishable in the discretion of the court.

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Supreme Court of the United States

OCTOBER TERM, 1965

No. 770

DR. WILLIAM R. BECK, APPELLANT,

versus

DANIEL R. McLEOD, ATTORNEY GENERAL OF SOUTH CAROLINA, APPELLEE

ON APPEAL FROM U. S. DISTRICT COURT—EASTERN DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

MOTION TO DISMISS

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The R. L. Bryan Company, Legal Printers, Columbia, S. C.

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MOTION TO DISMISS

Appellee moves to dismiss on the ground that the question presented is so unsubstantial as not to need further argument.

Appellant seeks review by appeal of a question which is foreclosed by the dismissal by this court, on the ground that there was no substantial question, of *Dantzler v. Callison,* 372 U. S. 939, 77 S. Ct. 263, 1 L. Ed. (2d) 235. The opinion below was by the Supreme Court of South

Carolina and is reported at 230 S. C. 75, 94 S. E. (2d) 177. In that case every question sought to be raised by the appellant here was raised and decided adversely to his contentions. The three-judge court below very properly held the dismissal of *Dantzler v. Callison* to be tantamount to an adjudication upon the merits, and therefore binding upon it, citing *Barton v. Sentner*, 353 U. S. 963, 1 L. Ed. (2d) 901. *Barton* is manifest authority that a dismissal for want of a substantial question is a decision on the merits. In addition the court below cited a number of cases indicating to it that appellant has no case. (Jurisdictional Statement, Appendix A, p. 3a, footnote 5.)

For the foregoing reasons, Appellee's Motion to Dismiss should be granted.

Respectfully submitted,

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